IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
1. S.B. Civil Second Appeal No.125/1998

Rajasthan State Road Transport Corporation
through its Managing Director, Parivahan Marg,
Chomu House, Jaipur & Three Others
...defendant-appellants
Versus
Bhanwar Lal S/o Shri Suaji
...plaintiff-respondent

2. S.B. Civil Second Appeal No.123/1998

Rajasthan State Road Transport Corporation
through its Managing Director, Parivahan Marg,
Chomu House, Jaipur & Three Others
...defendant-appellants
Versus
Bhanwar Lal S/o Shri Suaji
...plaintiff-respondent

Date of Order ::: 11.8.2006

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Vinod Goyal for defendant-appellants in both appeals
None present for plaintiff-respondent
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By the Court:-

None present on behalf of the plaintiff-respondent in spite of service of notice on him.

Heard learned counsel for the defendant-appellants.

Plaintiff-respondent Bhanwar Lal filed a suit for declaration to declare the order dated 5.3.1982, terminating his services from the post of Driver, the order dated 2.12.1983 of the appellate authority dismissing his appeal against the order dated 5.3.1982, and the order dated 3.7.1985 of the reviewing authority, as illegal, unconstitutional and void, and to decree his suit for

reinstatement with all consequential benefits.

Defendant-appellants filed their written statement wherein, apart from other submissions, they raised an objection to the effect that the plaintiff-respondent is a workman and the present dispute is an industrial dispute, therefore, the civil court has got no jurisdiction to entertain, try and decide the civil suit, and only remedy available to the plaintiff is to approach the Labour Court, who has got jurisdiction in this matter under the provisions of the Industrial Disputes Act, 1947.

The lower court framed four issues. Issue no.2 was 'as to whether the civil court has got jurisdiction to hear the present suit?'

Both the parties led their evidence and after hearing the arguments from both the sides, the lower court, vide judgment and decree dated 15.2.1991 partly decreed the suit of the plaintiff-respondent. The issue no.2 was decided against the defendant. The order dated 5.3.1982, terminating the services of the plaintiff-respondent, was declared null and void, and it was directed that the plaintiff-respondent will be reinstated on his post and he will be entitled to his salary from the date of his joining.

Being aggrieved with the aforesaid judgment and decree dated 15.2.1991 passed by the learned lower court, two appeals were preferred before the lower appellate court by both the parties. The plaintiff was aggrieved with the judgment of the lower court in not awarding him the back-wages from the date of order of his termination, whereas

the defendants were aggrieved with the judgment of the lower court whereby it declares the order of termination of the plaintiff as illegal. The lower appellate court, vide its common judgment and decree dated 27.11.1997, allowed the appeal of the plaintiff and dismissed the appeal of the defendants, and decreed the suit of the plaintiff in toto, directing the defendant Corporation to pay all arrears of back-wages to the plaintiff-workman from the date of order of his termination i.e. 5.3.1982. Hence, these two appeals have been preferred by the defendants-appellants, under Section 100 of the Code of Civil Procedure.

This Court, vide its orders dated 1.5.1998 (in second appeal no.125/1998) and 16.9.1998 (in second appeal no.123/1998), issued notices of these appeals to the plaintiff-respondent to show cause as to why these appeals be not admitted and finally disposed of at the admission stage itself, and stayed execution of the judgments and decrees dated 15th of February, 1991 of the lower court and dated 27th of November, 1997 of the lower appellate court, for a period of eight weeks. However, no one is present on behalf of the plaintiff-respondent, in spite of service of notices of the appeals on him.

A substantial question of law is involved in these appeals, which is formulated as under:-

> Whether the civil court has jurisdiction to entertain the suit for reinstatement filed by the plaintiff-workman?

The Hon'ble Supreme Court in the case of Rajasthan State Road Transport Corporation Vs. Zakir Hussain, {2005

(7) SCC 447} considered the similar question, which is involved in the present appeals, in detail, and held that the civil court has no jurisdiction to entertain, try and decide the civil suit and the only remedy available to the plaintiff-respondent is by way of reference under the provisions of the Industrial Disputes Act, 1947. The point is settled that the defendant Corporation is an industry and plaintiff is workman. The Hon'ble Supreme Court also directed that the plaintiff, in that case, shall not be allowed to continue in service any further and as per law he is not entitled to get any back-wages but in case the back-wages have already been paid then the same will not be refunded by him to the defendant Corporation. The relevant Paragraphs no.31 and 32 of the aforesaid judgment of the Hon'ble Apex Court in R.S.R.T.C. Vs. Zakir Hussain's case (supra) are reproduced here as under:-

> “31. For the foregoing reasons, we hold that the respondent ought to have approached the remedies provided under the Industrial Disputes Act. He has miserably failed to do so but approached the civil court, which on the facts and circumstances of the case has no jurisdiction to entertain and try the suit.
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> 32. The respondent has not acted bona fide in instituting the suit. It is seen from the order of the High Court that the respondent had been reinstated in service in the year 1990 and the backwages had also been paid to him. Though in law, the respondent is not entitled to any backwages, having regard to the facts and circumstances of this case, we are not inclined to order refund of the backwages already paid to the respondent. But we make it very clear that

> the respondent shall not be allowed to continue in service any further. He shall not be entitled to any further emoluments or service benefits except the amount, which has already been paid to him. The respondent shall be discharged forthwith. No costs. The appeal stands allowed."

The Hon'ble Apex Court again relied upon the decision in the case of Rajasthan State Road Transport Corporation Vs. Zakir Hussain (supra) in a recent decision in the case of R.S.R.T.C. & Others Vs. Ramdhara Indoliya {2006 (7) RDD 211 (SC)}. The relevant Paragraphs no.3, 4 and 5 of the aforesaid judgment of the Hon'ble Apex Court are reproduced here as under:-

> "3. We have heard Mr. S.K. Jain, learned counsel for the appellants. The respondent was appointed as a Conductor on daily wages by the corporation. His services were terminated as the same were not required by the corporation. The High Court, without considering the fact that the respondent being daily wager has no substantive right to hold the post, however, has committed serious error in dismissing the second appeal filed by the corporation and affirming the judgment and decree passed by the Appellate Court and also of the trial Court. In our view, the High Court has committed a grave error in not considering the fact that the respondent being workman and a dispute being an industrial dispute, Civil Court has no jurisdiction and try the suit for reinstatement. Trial Court which passed the decree has got no pecuniary jurisdiction and, therefore, the decree passed by the Trial Court is without jurisdiction. The above submissions made by Mr. S.K. Jain merit acceptance. In

fact, in the written statement filed by the appellant corporation, the question of jurisdiction has been specifically raised. The Court has also framed an issue in regard to the jurisdiction and hearing by the civil Court. However, the said issue has not been rightly considered and properly answered.

4.The case on hand is covered by a very recent decision of this Court reported in 2005 (7) SCC 447 (decided by Mrs. Justice Ruma Pal and Dr. Justice AR. Lakshmanan). The said appeal was filed by the very same Road Transport Corporation, against its workman, who was appointed as Conductor on probation and his services were terminated by the corporation, which was challenged by the workman. The very same workman had approached the civil Court and obtained a decree, which was affirmed by the Appellate Court and also by the High Court, against which Civil Appeal No.5176 of 2005 was filed by the Rajasthan State Road Transport Corporation in this Court. This Court, after hearing the Counsel appearing for the respective parties, held that the only remedy available to the workman was by way of reference under the Industrial Disputes Act and not by way of a suit. This Court also held that the workman in that case was also not entitled to the protection under Article 311 (2) of the Constitution of India. This Court also held that if the Court has no jurisdiction, the jurisdiction cannot be conferred by any order of the Court. This Court also held that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner. The respondent in that case has failed to approach the remedies provided under the Industrial Disputes Act.

> 5. In the instant case also, the respondent, who is also similarly placed as in the other case covered by the Industrial Disputes Act, has failed to approach the Industrial Court, but approached the civil Court, which on the facts and circumstances of the case had no jurisdiction to entertain and try the suit. Therefore, this judgment (supra) rendered by this Court squarely applies to the facts and circumstances of this case. In our view, the respondent is not entitled for any payment by way of salary or other wages. He is also not entitled for any reinstatement or back wages. However, if the respondent has already been paid some amount, the same amount may not be recovered from him. We make it clear that the respondent shall not be entitled to continue in service any further and he shall not be entitled for any wages except to already paid to him. The respondent shall be discharged forthwith."

In this view of the matter, it is clear that the substantial question of law involved in the present case is fully covered by the aforesaid authoritative pronouncements of the Hon'ble Supreme Court, and the substantial question, formulated above, is answered that the civil court has no jurisdiction to entertain, try and decide the suit in the matter of industrial dispute and the only remedy for the same is to file reference under the provisions of the Industrial Disputes Act, 1947.

In the result, both the appeals, filed by the defendants-appellants, are allowed. The impugned judgments and decrees passed by both the courts below are set aside and the suit filed by the plaintiff-respondent is

dismissed. It is made clear that the plaintiff-respondent shall not be allowed to continue in service any further, but in case any wages or regular salary has been paid to him, the same shall not be recovered from him. It will be open for the plaintiff-respondent to approach the Labour Court for his grievances in accordance with the provisions of law. There shall be no order as to costs.

(Narendra Kumar Jain) J.

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